

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION**

**ORDER BY CONSENT
ISSUED TO**

**ROCKBRIDGE COUNTY, VIRGINIA
ROCKBRIDGE COUNTY SANITARY LANDFILL
SOLID WASTE PERMIT NO. 75**

SECTION A: Purpose

This is a Consent Order issued under the authority of Sections 10.1-1455 of the Code of Virginia between the Virginia Waste Management Board and Rockbridge County, Virginia, to resolve certain alleged violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Order" means this document, termed a Consent Order under the authority of the Virginia Waste Management Act.
3. "Waste Board" means the Virginia Waste Management Board, a permanent Citizens' Board of the Commonwealth of Virginia described in Va. Code §§ 10.1-1401 and 10.1-1184.

4. "the County" means Rockbridge County, Virginia.
5. "RCSLF" means the Rockbridge County Sanitary Landfill.
6. "DEQ" means the Virginia Department of Environmental Quality, an independent administrative agency within the executive branch of the Commonwealth of Virginia as described in Va. Code § 10.2-1183.
7. "VRO" means DEQ's Valley Regional Office.
8. "Director" means the Director of DEQ, whose powers and duties are described in Va. Code § 10.1-1185.
9. "VSWMR" means the Waste Board's Solid Waste Management Regulations, 9 VAC 20-80-10 et seq.
10. "SSI" means a statistically significant increase.
11. "ASD" means an alternate source demonstration.

SECTION C: Findings of Facts and Conclusions of Law

1. On September 22, 1972, the Virginia Department of Health (the predecessor of DEQ for regulation of solid waste management facilities) issued Solid Waste Permit No. 75 to the County for operation of the RCSLF. The RCSLF is located approximately two miles northwest of Buena Vista. The design of the RCSLF does not include an engineered lining system.
2. Groundwater monitoring wells were first installed at the RCSLF in 1992. Groundwater is monitored at the site pursuant to 9 VAC 20-80-250.D of the VSWMR. Groundwater quality at the RCSLF is monitored utilizing an array of monitoring wells. Monitoring Well No. 10 ("MW-10") monitors groundwater quality in the area downgradient of the landfill.
3. Over the past two years, several inorganic constituents have been detected at the RCSLF in MW-10 at concentrations indicating SSIs over background concentrations for those same constituents. Pursuant to 9 VAC 20-80-250.D.5.c.(3) and (4) of the VSWMR, such SSIs require that the subject facility, within 90 days of identifying the SSI, initiate assessment monitoring or submit an ASD.
4. On multiple occasions, the most recent being by letter dated January 24, 2002, DEQ has notified the County in writing that SSIs had been identified and that the County was required to initiate assessment monitoring or submit an ASD.

5. To date, the County has not initiated assessment monitoring at the RCSLF. The County has submitted information in an apparent effort to comply with 9 VAC 20-80-250.D.5.c.(4) of the VSWMR regarding performance of an ASD. The County has not, however, submitted any successful ASDs within 90 days of noting the SSIs; therefore, the time requirements to submit the ASDs have expired for all monitoring events in which the exceedances were noted.
6. DEQ staff apparently did not recognize the County's correspondence as attempted ASDs; accordingly, DEQ staff did not approve or disapprove the County's ASD submittals. DEQ and the County recognize that the VSWMR do not prescribe the methodology for performance of ASDs nor do they contain a protocol for DEQ's review and approval of ASDs.
7. On April 23, 2002, DEQ issued Notice of Violation No. WS-02-04-VRO-029 to the County citing the County for failure to commence assessment monitoring and failure to complete an ASD in apparent violation of 9 VAC 20-80-250.D.5.c.(3) and 9 VAC 20-80-250.D.5.c.(4) of the VSWMR, respectively.
8. On May 20, 2002, DEQ staff met with representatives of the County, including the County's groundwater consultant, in an informal settlement conference to discuss the violations cited by DEQ. During the discussion, DEQ staff and the County's representatives agreed that there were some technical issues surrounding the validity of the groundwater quality data at the RCSLF. Specifically, the parties agreed that the high turbidity present in Monitoring Well No. 10, the well in which there was a SSI for inorganic constituents, may be causing data validity problems. The parties agreed that DEQ had the authority to require the County to commence assessment monitoring given the repeated SSIs and since the County had missed the deadline for making an ASD; however, the parties also agreed that the turbidity problem supported an approach for conducting additional investigative work before a final decision on the need for assessment monitoring is made by DEQ. The parties also discussed the parameters to be used by the County in its development of a work plan to be submitted to DEQ for conducting the additional investigative work.
9. The County's groundwater consultant has submitted a report to DEQ entitled Rockbridge County Landfill, DEQ Permit No. 75, Work Plan, Alternate Source Demonstration, DAA Job No. 7103-07 ("Work Plan"), dated May 29, 2002.
10. By e-mail message dated July 9, 2002, DEQ advised the County's groundwater consultant that the Work Plan has been conditionally approved by DEQ; accordingly, the Work Plan and its associated schedule are hereby incorporated into and become an enforceable part of the Order.

11. At the conclusion of the work performed under the Order, DEQ will formally approve or disapprove the County's ASD which will determine whether assessment monitoring is required at the RCSLF or if the County can remain under detection monitoring. Should DEQ's decision be adverse to the County, DEQ acknowledges that the County reserves its rights regarding hearings and appeals under the Virginia Administrative Process Act (Va. Code §§ 2.2-4000 *et seq.*).

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455 orders Rockbridge County, and Rockbridge County agrees to implement the approved Work Plan in accordance with the approved schedule and DEQ's conditions of approval. The Board and Rockbridge County acknowledge that the SSIs which form the basis for the Order may recur pending completion of the actions required under the Order.

SECTION E: Administrative Provisions

1. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in Notice of Violation No. WS-02-04-VRO-029 issued to the County on April 23, 2002. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
2. For purposes of this Order and subsequent actions with respect to this Order, the County admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
3. The County declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any and all other facts and conclusions of law, including any action taken by the Board to enforce this Order.

4. Failure by the County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
5. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
6. The County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 72 hours of learning of any condition above, which the County intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

7. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
8. This Order shall become effective upon execution by both the Director or his designee and the County. Notwithstanding the foregoing, The County agrees to be bound by any compliance date which precedes the effective date of this Order.
9. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the County. The County may petition the Director to terminate the Order following completion of all actions required under the Order.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

10. By its signature below, the County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

Rockbridge County voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _ day of _____, 2002, by _____, who is
(name)

_____ of Rockbridge County on behalf of Rockbridge County.
(title)

Notary Public

My commission expires: _____.